HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRI. REV. APPLICATION NO. 342 OF 2004.
with
Cri. Application No. 17 of 2005.

Mrs. Radhika S. Ganji. ..Applicant.

Versus.

Mr. Shridhar V. Ganji. ..Respondent.

Mr. Rajaram Adeep for the applicant.

Mr. Pratap Jadhav i/b Aashish Patil for the respondent.

CORAM: S.B.MHASE &
D.B.BHOSALE, JJ.

DATE: FEBRUARY 7, 2005.

P.C.

1. Heard both sides. The revision petitioner has challenged the order dated 21.6.2004 passed by the Family Court in M.J.Petition No.E-60 of 2002 filed by the petitioner under section 125 of the Code of Criminal Procedure. The petitioner-wife has claimed maintenance under section 125 of the Code of Criminal Procedure. After service of notice, husband appeared in the said proceeding and filed application "Exhibit-8" contending that the application filed by the wife is not maintainable. According to the respondent-husband, the said application was not maintainable because the respondent alleged that there was a divorce between the petitioner and the

respondent on 27th April 2001. He states that they belong to the "Padmashali" community and amongst the "Padmashali" community, according to the respondent there is a custom of a customary divorce. The respondent claims that in such a customary divorce, all claims of maintenance and inheritance are given up by the wife and therefore the petition is not tenable. On this limited issue, the evidence was recorded and the Family Court has come to the conclusion that the application filed under section 125 of the Code of Criminal Procedure is not tenable.

. We find that the evidence, as has been recorded, is insufficient to infer a custom amongst the community. In fact, the divorce deed itself is under challenge and so many other admissions have been given by the witness - Murari Ramulu Ragoti which practically did not allow to infer that there is a customary divorce. In view of this position, the learned counsel for the respondent submitted that he is ready to go for the whole trial and the issue of customary divorce may be kept open. Learned counsel for the petitioner submitted that he has no objection if the revision is allowed and matter is sent back for complete trial. However, he submitted that such a divorce is against the public policy, especially in not granting any maintenance. However, since both parties are ready to go for whole trial, keeping all the issues open, we feel it

appropriate to remand back the matter for disposal in accordance with law. We, therefore, allow the revision application, the order dated 21.6.2004 passed by the Family Court, Bandra in M.J.Petition No.E-60 of 2002 is hereby quashed and set aside. We direct that the respondent shall file a complete say on the application and the family court shall try the complete application in which one of the issue will be in respect of the customary divorce - "whether it is against the public policy", etc., as are submitted before us.

2. We make it clear that all the issues which the parties desire to raise are kept open for consideration of the family court and all other points and issues shall be dealt with by the family court in a final judgment instead of entertaining any interlocutory applications as has been done in the present case by following the procedure while dealing with Exhibit-8. We express our displeasure for the system and the manner in which the matter was conducted by the trial court. The family court missed to take into consideration that section 125 of the Cr.P.C. is an immediate remedy provided to the destitute wives and children.

3. With these observations revision application stands disposed off. In view of the disposal of the

revision application itself, criminal application No. 17 of 2005 is disposed off.

(D.B.BHOSALE,J.) **(S.B.MHASE, J.)**

:srp/2005/